IN THE HIGH COURT OF DELHI

RSA No. 150/2006

M/s. Mohan Meakin Ltd. ..... Appellant
! through: Mr. B.D.Batra, Advocate

VERSUS

$ Mr. Krishan Dutt Yadav ..... Respondent
^ through: Mr. Jagat Rana, Advocate

% DATE OF DECISION: 6.12.2007

CORAM:

* **Hon'ble Mr.Justice Pradeep Nandrajog**

1. Whether reporters of local papers may be allowed to see the judgment? Y

2. To be referred to the Reporter or not? Y

3. Whether judgment should be reported in Digest? Y

: **PRADEEP NANDRAJOG, J.** (ORAL)

1. Following question of law is framed:-

"Whether Ex. PW-1/1 can be treated as the statement of account attracting Article 1 of the Limitation Act 1963?"

2. Arguments heard.

3. Relevant facts are that the respondent filed a suit for recovery of Rs.47,926/- against the appellant alleging that he was providing taxis and coaches to the appellant for transportation and as and when a vehicle was hired and services were rendered a bill used to be raised. Money due used to be entered in the books of account maintained by the

respondent. That the account was a running account. That after 30.9.1999 appellant stopped hiring vehicles from the respondent. That for services rendered Rs.1,76,808/- were due and payable out of which a sum of Rs.1,48,882/- was received by the respondent. That Rs.27,926/- remained outstanding. It was stated that the outstanding amount pertained to 3 bills being bill No. 50033 dated 4.2.99, bill No. 51759 dated 5.7.99 and bill No. 52448 dated 30.9.99. It was stated that the last bill was in sum of Rs.9,397/-. It was stated that since Rs.27,926/- remained outstanding respondent was entitled to interest @ 24% per annum i.e. Rs. 20,000/-.

4. The suit was filed on 27.9.2002.

5. Apart from other issues, an issue was framed whether the suit was barred by limitation. The reason thereof was that the appellant denied any running account being maintained. It claimed that limitation commenced when alleged service was stated to be rendered.

6. Other issues were also framed. But I need not deal with the same for the reason learned counsel for the parties have debated at the bar only in relation to the question of law as afore framed.

7. The respondent who appeared as his witness did not produce any account books. The typed stated statement of

account Ex. PW-1/1 was thus held by the learned Trial Judge not to be a proof that parties were maintaining a running account. I note that the respondent did not allege that he was maintaining accounts in an electronic form and that the print out Ex. PW-1/1 was a computer generated copy thereof.

8. Learned Appellate Court has differed. Learned Appellate Court has held that Ex. PW-1/1 has to be treated as the statement of account notwithstanding that books of account were not maintained. This limitation has been reckoned from the end of the financial year in which the last bill was raised.

9. Suffice would it be to state that an extract from a document or an entry pertaining to a document is secondary evidence of the primary.

10. Bills and vouchers are primary documents pertaining to commercial transactions. Law treats a statement of account maintained in the normal course of business as good evidence of what is recorded therein. Thus, a statement of account has to be proved with reference to and on production of the books of account. If kept in an electronic made, proof has to be as per Section 65B of the Evidence Act.

11. It is not the case of the respondent that appellant was his sole customer and therefore the loose sheets (2 pages),

Ex. PW-1/1 was the only account maintained by him.

12. Under the circumstances, the inevitable conclusion has to be that the learned Appellate Court has wrongly applied the law by treating the typed statement Ex. PW-1/1 as the statement of account.

13. But, for said reason appellant would not get full victory. Article 1 of the Limitation Act 1963 reads as under:-

"Description of suit	Period of limitation	Time from which period begins to run
For the balance due on a mutual, open and current account, where there have been reciprocal demands between the parties.	Three years	The close of the year in which the last item admitted or proved is entered in the account; such year to be computed as in the account."

14. Since Ex. PW-1/1 has been held by me not to be proved as an open, current and mutual account, for purposes of limitation Article 1 of the Limitation Act 1963 would not be attracted.

15. As noted above, out of the three outstanding bills, bill in sum of Rs.9,397/- is dated 30.9.99.

16. It is urged by learned counsel for the appellant that the bill relates to an alleged service rendered between 20.9.99 and 25.9.99 and hence limitation commenced on 26.9.1999.

17. I am afraid, after a transaction is completed and a bill is raised, limitation would commence when payment under

the bill is refused.

18. Pertaining to the other two bills I note that payment was refused in the respective month when the bills were raised. Pertaining to bill in sum of Rs.9,397/- payment was refused after the bill was raised i.e. after 30.9.99.

19. Thus, the suit would be within limitation as regards said bill in sum of Rs.9,397/-.

20. The bill in question along with other bills have been proved as Ex. PW-1/2 collectively. I find no term in the bills that if not paid within a particular date the same shall be liable to be paid with interest @ 24% per annum. Thus, interest payable to the respondent would be in terms of the Interest Act 1978 i.e. at rate which was offered by Scheduled Banks and with effect from the date demand for interest was made.

21. Demand was raised vide Ex. PW-1/3 only on 11.9.2002.

22. The appeal is accordingly disposed of modifying the impugned judgment and decree by decreeing the suit in sum of Rs.9,397/- together with interest @ 10% per annum with effect from 11.9.2002 till said sum is paid.

23. The respondent would be entitled to proportionate costs.

24. LCR be returned.

December 06, 2007 **PRADEEP NANDRAJOG, J.**
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